

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

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September 21, 2000

**Tue 7a**

TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE  
LAURINDA OWENS, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON MAJOR AMENDMENT NO. 3-2000  
(Affordable Housing) TO THE CITY OF SAN DIEGO LOCAL COASTAL  
PROGRAM IMPLEMENTATION PLAN (For Public hearing and Possible Action  
at the Meeting of October 10-13, 2000)

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**SYNOPSIS**

This LCP amendment was the subject of a public hearing before the Commission at the September 2000 meeting in Eureka. Due to concerns raised by the Dept. of Housing and Community Development, the Commission determined that action on the LCP amendment would be premature at that time. Because the mandated time limits for Commission action were about to expire, the City had to withdraw the amendment request and resubmit the request for subsequent Commission consideration at the October 2000 hearing. The LCP amendment has been given an updated number, but will not be considered an additional LCP submittal by the City of San Diego for the year 2000. The staff report is the same as that distributed for the September hearing with the exception of a clarification at the top of page thirteen. A previous statement suggested the Commission's concern regarding deviations from the environmentally sensitive lands regulations pertained to any increase in density beyond that permitted by the underlying zone. The intent of the suggested modification #2 is to not allow deviations from the environmentally sensitive lands regulations as an additional development incentive beyond the mandated 25% density bonus.

**SUMMARY OF AMENDMENT REQUEST**

The proposed amendment revises the City's LCP Implementation Plan (Land Development Code) to incorporate additional development incentives for the provision of affordable housing in accordance with state law. The modifications would allow for the following as additional development incentives: 1) deviations from applicable development regulations; 2) a density bonus greater than 25 percent; or, 3) financial incentives to encourage the construction of affordable housing. Other minor changes to the City's affordable housing program include application of more stringent affordability requirements, provisions for density bonuses for projects where 50% of the units are

reserved for senior citizens and changes to how the affordable units are calculated. This amendment is proposed to bring the General Plan, Land Development Code and LCP into conformity.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the subject amendment request and then approval with suggested modifications. The first suggested modification adds a supplemental finding to the Coastal Development Permit procedures which clarifies that when a deviation is requested from the applicable development regulations as an incentive to providing affordable housing in the Coastal Overlay Zone, the development should only deviate from the LCP in density and the applicable development standard for which the deviation is sought. In considering possible incentives, the permitted incentive should be the one most protective of sensitive coastal resources. With the permitted incentive the project should be consistent with the certified land use plan and LCP implementation plan. The second suggested modification adds language which clarifies that deviations from the Environmentally Sensitive Lands regulations are not permitted as a deviation incentive for affordable housing.

The appropriate resolutions and motions begin on page 4. The suggested modifications begin on page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on page 6. The findings for approval of the Implementation Plan Amendment, if modified, begin on page 9.

### **BACKGROUND**

The City of San Diego has 12 geographic LCP segments. The subject amendment request involves modification to its implementation plan which is part of the City's LCP. The City's implementation plan known as the Land Development Code (LDC), was approved by the Commission in February, 1999 and effectively certified in November, 1999. The City's affordable housing program provisions from its former municipal code were simply incorporated into the LDC without significant changes. The Commission approved the language in the LDC addressing affordable housing because at the time, the City asked that any revisions to the code language addressing affordable housing not be modified by the Commission at that time, due to the pending nature of the City's Housing Element and the City's intent to address the Commission's concerns in a future LCP amendment. At that time, the City had not yet amended its local regulations addressing changes in state law in 1990 pertaining to affordable housing which required localities to offer a second development incentive beyond a density bonus and, as such, a lawsuit was filed against the City and the Housing Commission for failure to amend its ordinance to comply with the changes in the state law. The lawsuit was settled out of court in September, 1998 with the principal provision of the settlement being that the City would agree to amend its local ordinance to comply with state law. The revisions to the Affordable Housing regulations are, thus, now being brought forward as the subject LCP amendment request.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment No. 1-99 (Affordable Housing) may be obtained from Laurinda Owens, Coastal Planner, at (619) 767-3270.

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**PART I. OVERVIEW****A. LCP HISTORY****A. BACKGROUND/LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve (12) parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments; the status of those submittals is as follows:

1. North City - certified as resubmitted January 13, 1988;  
Torrey Pines LUP Update certified on  
February 8, 1996
2. La Jolla/La Jolla Shores - certified as submitted on April 26, 1983
3. Pacific Beach - certified as Update resubmitted on  
May 11, 1995
4. Mission Beach - certified as submitted on July 13, 1988
5. Mission Bay - certified with suggested modifications  
on November 15, 1996
6. Ocean Beach - certified as resubmitted on  
August 27, 1985
7. Peninsula - certified as resubmitted on  
August 27, 1985
8. Centre City/  
Pacific Highway  
Corridor - certified with suggested modifications  
on January 13, 1988
9. Barrio Logan/  
Harbor 101 - certified as submitted on  
February 23, 1983
10. Otay Mesa/Nestor - certified as submitted on  
March 11, 1986
11. Tia Juana River  
Valley - certified as submitted on  
July 13, 1988

12. Border Highlands - certified as submitted on  
July 13, 1988

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would involve a single unifying submittal. This was achieved in January, 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

In February, 1999, the Commission approved, with suggested modifications, LCP Amendment #3-98B, consisting of the City's Land Development Code (LDC). These ordinances represented a complete rewrite of the City's former implementation plan (Municipal Code) which had been previously certified by the Commission as part of the City of San Diego Local Coastal Program (LCP). In addition to ordinances, the LDC included the Land Development Manual, which consisted of the Coastal Bluffs and Beaches Guidelines, Steep Hillside Guidelines, Biology Guidelines; Landscape Standards and Historical Guidelines. Action on the Steep Hillside Guidelines was deferred until August, 1999. The LDC, including the Land Development Manual, was effectively certified as the City of San Diego LCP Implementation Plan on November 4, 1999.

## **B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

## **C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

**MOTION I:** *I move that the Commission reject the Implementation Program for City of San Diego certified LCP as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program submitted for *City of San Diego certified LCP* and adopts the findings set forth below on grounds that the Implementation Program as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

**MOTION II:** *I move that the Commission certify the Implementation Program for City of San Diego certified LCP if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program for *City of San Diego certified LCP* if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Implementation Program if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### **PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested revisions to the proposed LCP Implementation Plan Amendment be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Under Section 126.0708 Findings for Coastal Development Permit Approval, the following shall be added as Section (f):

(f) Supplemental Findings – Affordable Housing Within the Coastal Overlay Zone

When a deviation is requested from the applicable development regulations as an incentive to providing affordable housing in the Coastal Overlay Zone pursuant to Section 143.0750, the deviation may be approved or conditionally approved only if the decision maker makes the following supplemental finding in addition to the findings in Section 126.0708 (a-d) and Section 126.0504 as applicable.

The project is designed in a manner that is most protective of significant coastal resources, and is otherwise consistent with all applicable policies of the certified LCP land use plan and LCP implementation plan, with the exception of density and the applicable development standard for which the deviation is requested.

2. Under Section 143.0150 Deviations from Environmentally Sensitive Lands Regulations the following should be added to subsection (c):

(c) Within the Coastal Overlay Zone, deviations from the Environmentally Sensitive Lands Regulations may be granted only if the decision maker makes the findings in Section 126.0708. Deviations from the Environmentally Sensitive Lands Regulations are not permitted as a development incentive for affordable housing pursuant to Section 143.0750.

### **PART IV. FINDINGS FOR REJECTION OF THE CITY OF SAN DIEGO LCP IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

#### **A. AMENDMENT DESCRIPTION**

The City is proposing to amend its affordable housing density bonus program under its certified LCP to comply with State requirements which became effective in 1990. According to the City's Manager's Report dated 5/25/99, the adoption of this program

would result in more stringent housing affordability requirements than those required in the current Density Bonus regulations and would facilitate usage of the density bonus program by allowing developers to request a deviation from development regulations as an additional incentive, if certain findings can be made.

As described in the City's Manager's Report, Section 65915 of the State Government Code requires all local jurisdictions in California to offer a density bonus for affordable housing. The bonus is 25% above the maximum density otherwise permitted by the underlying zone. The City of San Diego has had an ordinance implementing this requirement in its certified LCP since the early 1980's. About 1,000 affordable units have been provided under the program since that time. In 1990, Section 65915 was amended to require localities to offer a second incentive or concession beyond the additional units provided by the 25% density bonus. As a trade-off for this measure to offer additional incentives, the affordability requirements associated with the lower income units have been made more stringent. The City did not amend its regulations to implement these provisions in a timely manner and, as such, a lawsuit was filed against the City and Housing Commission. In order to comply with the amended provisions of Section 65915, the City proposes the subject amendment request to change its affordable housing density bonus regulations.

The Affordable Housing Density Bonus Regulations are contained in Chapter 14, Article 3, Division 7 of the Land Development Code entitled Affordable Housing Density Bonus Regulations commencing with Section 143.0710. The City's submittal proposes to delete current language in Sections 143.0740 and 143.0750 and replace it with new language as follows:

SEC. 143.0740 – Additional Development Incentive for Affordable Housing

In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent density bonus. The additional development incentive may consist of the following:

- (a) a density bonus of more than 25 percent;
- (b) a financial incentive consisting of:
  - (1) fee reductions or deferrals as authorized for affordable housing in the Municipal code; or
  - (2) direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis, or



- (c) a deviation from applicable development regulations of the underlying zone pursuant to Section 143.0750.

Section 143.0750 establishes the deviation process and states:

SEC. 143.0750 - Deviation to Allow for Additional Development Incentive

An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(l) are made.

The Site Development Permit for a deviation from applicable development regulations must be approved through Process 4 which is for applications for permits that are approved or conditionally approved or denied by the Planning Commission and which are appealable to the City Council. Previously, projects that included affordable housing were only reviewed under the City's Process Three, which involves only a review by a Hearing Officer. Thus, the Commission concurs the proposed change to review affordable housing projects which include a deviation under Process Four, which affords a higher level of discretionary review, is appropriate.

The findings required to approve a Site Development Permit are contained in Site Development Permit Procedures in the Land Development Code commencing with Section 126.0501. Section 126.0504 states:

SEC. 126.0504 Findings for Site Development Permit Approval

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(b) through (l) that are applicable to the proposed development as specified in this section.

a) Findings for all Site Development Permits

- (1) The proposed development will not adversely affect the applicable land use plan;
- (2) The proposed development will not be detrimental to the public health, safety and welfare; and
- (3) The proposed development will comply with the applicable regulations of the Land Development Code.

And,

l) Supplemental Findings – Deviation for Affordable Housing

A development that requires a Site Development Permit in accordance with Section 143.0750 because the applicant has requested a deviation from the applicable development regulations as an additional incentive to a density bonus for providing affordable housing may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):

- (1) The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.
- (2) The development will not be inconsistent with the purpose of the underlying zone.
- (3) The deviation is necessary to make it economically feasible for the applicant to utilize any density bonus authorized for the development pursuant to Section 143.0730.

Also proposed is a clarification in Section 143.0730 that the development shall be permitted at a density that does not exceed 125 percent of the units permitted by the density regulations of the applicable base zone. Additionally, any additional density bonus above 25% would be calculated in the same manner. Section 113.0222 of the Land Development Code includes the methodology for calculation of density for any zone which contains a maximum permitted density, such as 1,500 sq.ft./unit. The units permitted would be determined by dividing the lot area by the maximum permitted density as shown in the following example. The percentage of affordable units is then applied to the number of pre-bonus units instead of the total number of units. This modification is proposed in Section 143.0720 in the City's submittal. An example of a density and affordable unit calculation is as follows:

RM Zones (multi-family)

Base Density of a lot in R-M 2-5 Zone =

Lot Area = 20,000 sq.ft.

Maximum Permitted Density = 1,500 sq.ft./dwelling unit

Units Permitted =  $20,000 \text{ sq.ft.} / 1,500 = 13.3 \text{ units}$  (rounded down to 13 units)

Calculation of Density Bonus =

$13.0 \times 1.25 = 16.25$  (cannot be rounded up a second time) = 16.0 units

Total Density with Bonus =  $13 + 3 = 16$  dwelling units

Number of Units Which Must be Provided as Affordable =

$$20\% \text{ of } 13 = .20 \times 13 = 2.6 \text{ (rounded up to } 3.0) =$$

3 units which must be affordable to low income households

The City has indicated if the density bonus shown in the above example can be accommodated in a manner that is not inconsistent with the purpose of the underlying zone, such a bonus can be granted.

Other changes to the housing element of the City's certified LCP will result in more stringent affordability requirements. The current density bonus regulations require that at least 20 percent of the total units be affordable to households of low or moderate income. Low-income units must be affordable at the 80 percent level of area median income and moderate income units must be affordable at 120 percent of area median income. All units must remain affordable for 20 years. The 1990 State statute amendments resulted in changes to these affordability provisions such that moderate income affordable units no longer qualify for the density bonus. Changes were also made to the percentage of area median income that must be affordable and that the minimum term of affordability be lengthened from 20 years to 30 years if a second incentive or concession is utilized. If no second incentive is utilized, the minimum term of affordability is reduced to ten years. In either case, after ten or 30 years, the units need no longer remain affordable pursuant to state law.

Two other changes to the implementation plan include that a density bonus be made available for projects where at least 50 percent of the units are reserved for persons who qualify as senior citizens. In addition, as described above, changes relating to how the number of affordable units is calculated were also made.

## **B. SPECIFIC FINDINGS FOR REJECTION**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The purpose of the ordinance is to provide increased residential densities to developers who guarantee that a portion of their residential development will be available to low income, very low-income, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for low income, very low-income and senior households throughout the City. It is intended that the affordable housing density bonus and any additional development incentive be available for use in all residential developments, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

b) Major Provisions of the Ordinance. The major provisions of the ordinance include when affordable housing density bonus regulations apply, requirements for an affordable housing density bonus agreement, the density bonus provisions and additional development incentives for affordable housing.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The proposed ordinance amendment is a change to the existing Land Development Code, which is part of the certified LCP. The ordinance changes will include additional language addressing a second development incentive or concession to developers beyond the 25% density bonus for purposes of providing affordable housing. As described earlier, such incentives include a deviation from applicable development regulations requiring a Site Development Permit and a Coastal Development Permit. The City has not identified what types of deviations may be considered for approval. However, deviations to development standards have typically consisted of relaxed development standards such as a reduction in the amount of required on-site parking or landscaping, etc. The City's revised ordinance also provides that a deviation may also consist of a density bonus that is greater than 25 percent. In addition, another development incentive may also include a financial incentive such as direct cash assistance from the Housing Commission or Redevelopment Agency or a reduction of water and sewer fees or the deferral of development impact fees until issuance of an occupancy permit.

Although the existing ordinance includes provisions for the different findings that must be made depending on the type of permit that is being obtained, due to the nature of the process, it is not sufficiently clear that such development incentives and/or deviations from the development regulations should only be considered on sites able to accommodate an increased intensity without creating inconsistencies with the policies and development standards in the LCP. Deviations from applicable regulations as an incentive to affordable housing are not permitted by right and, as such, are not mandated to occur at the expense of significant coastal resources. For projects in the Coastal Overlay Zone, the Commission finds Section 126.0708 of the ordinance which contains the required findings for a Coastal Development Permit should be clear in providing the standard of review for any development proposals that is most protective of coastal resources. It should be clear that the project should only deviate from the LCP in density and the applicable development standard for which the deviation is sought, but in all other respects it is consistent with the certified land use plan and LCP implementation plan.

Additionally, the Commission is concerned that, as submitted, a deviation from the Environmentally Sensitive Lands (ESL) regulations may be considered a possible incentive to encourage affordable housing. In its certification of the LDC, the Commission addressed deviations from the ESL regulations through suggested changes because the Commission was concerned that such deviations should be allowed under very limited and specific conditions. The suggested modifications were accepted by the City and the language makes clear that, in the Coastal Overlay Zone, deviations from the ESL regulations should only be considered if there would otherwise be a denial of all

economically viable use of the property. The Commission does not believe that a density increase beyond the mandated 25% density bonus is appropriate as a development incentive if it requires a deviation from the environmentally sensitive lands regulations. Such deviations should only be considered in very limited cases involving such highly constrained and sensitive property that reasonable use would otherwise be precluded. In such a case, a density increase would certainly result in conflicts with other applicable LCP provisions such that the required findings could not be made. Therefore, the Commission finds that Section 143.0150 of the ESL regulations which addresses deviations should be revised to clarify that deviations from the ESL regulations are not permitted as a means to accommodate affordable housing. As submitted, the proposed ordinance is not consistent with, nor adequate to carry out the policies of the certified land use plan, unless such a modification is included.

## **PART V. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

As stated previously, the City is proposing changes to its existing certified ordinances addressing affordable housing. As described above, the purpose of the proposed ordinance is to provide additional development incentives for the provision of affordable housing. These incentives may consist of a density bonus of more than 25 percent; a financial incentive consisting of fee reductions or deferrals as authorized for affordable housing in the Municipal code or direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds; or, a deviation from applicable development regulations of the underlying zone.

### **A. DEVIATIONS FROM DEVELOPMENT REGULATIONS.**

The types of deviations from the applicable development regulations that might be requested by an applicant are not clearly identified in the proposed LDC language and are fairly open-ended. It is up to the developer and/or applicant to specifically request what kind of deviation they would like to have granted. In the review of other LCP amendments pertaining to affordable housing, such deviations have typically included relaxed development standards, such as, a reduction in the amount of on-site parking or provision of on-site landscaping. Typically, the Commission has suggested language is necessary in the ordinance to assure the City approves the development incentive that has the least environmental impact and is most protective of significant coastal resources. With regard to the types of deviations from development standards which may be granted, the City has stated that they prefer not to identify what types of deviations may be considered in their ordinance. This is because, if this information were included, it may be misconstrued to mean that such deviations are granted by right.

The Coastal Commission has stated several concerns to the City in the past with regard to affordable housing and development incentives for projects in the coastal zone. This is because granting of density bonuses and incentives, such as deviations from development standards, could result in development which is inconsistent with many of the City's land use plan policies that address protection of coastal resources including wetlands, public

access, visual resources, etc. As such, to the extent feasible, density increases should be accommodated without creating inconsistencies with the policies and development standards of the certified LCP and without adverse impacts to significant coastal resources. The City has a series of processes that an applicant must go through when a density bonus is sought in connection with proposed development or when an applicant seeks a deviation from the applicable development regulations as an additional development incentive for a density bonus for affordable housing. The City has indicated, the purpose of the proposed ordinance is to set up the process where density bonuses and deviations from development regulations can be approved *if* consistent with all of the other regulations of the Land Development Code.

In the coastal zone, different kinds of development permits are required for projects which propose affordable housing pursuant to the City's Land Development Code. Pursuant to Section 126.0502, a Site Development Permit is required for development projects including affordable housing. In accordance with this process, certain findings must be made (as previously outlined in the amendment description). However, in the Coastal Overlay Zone, development projects which propose affordable housing must also obtain a Coastal Development Permit. The Coastal Development Permit process includes a separate set of findings in Section 126.0708 (ref. Exhibit #4) that must be made in order to assure conformance with the certified land use plan policies, the certified LCP implementation plan and the public access and recreation policies of the Coastal Act.

In review of projects involving affordable housing in the Coastal Overlay Zone, the City must determine what type of deviation is appropriate depending on the nature of the site and any potential impacts to coastal resources. Any development proposal that includes affordable housing should only be granted a development incentive if the findings can be made that, with the permitted incentive, the project is the *most* protective of coastal resources when considering all possible incentives, and the project is, therefore, the *least* environmentally damaging alternative.

The Commission acknowledges that the findings of the different processes the City requires for affordable housing are subject to interpretation. Additionally, the proposed incentives offer a variety of ways to lessen the regulatory and site constraints and allow an increase in the number of units in a development project. In previous direction to the City regarding their affordable housing program, density bonuses and deviations, the Commission has made it clear that coastal resources may be adversely affected *only* when it has been found to be impossible to accommodate the mandated 25% density increase without such impacts. In those situations, the density increase must be accommodated by those means that are the most protective of significant coastal resources.

With regard to proposed development incentives and deviations from development regulations, if such incentives will not adversely affect coastal resources, then those incentives should be encouraged. However, if all possible incentives will have an adverse effect on coastal resources, the LCP must provide for use of the incentive that is the most protective of significant coastal resources. In this particular case, it would

appear the financial incentive would always be the most protective option, if adverse impacts to coastal resources are involved.

Following are several examples of how the significance of the resource and/or impact must be considered and weighed in order to determine what incentive should be granted in order to make the applicable findings of approval for a coastal development permit.

The CDP findings require that the proposed coastal development will not encroach upon any existing physical accessway legally used by the public or that is identified in an LCP land use plan, and that the development will enhance and protect public views to and along the ocean. As such, if a project that includes affordable housing is proposed that would encroach onto an existing physical accessway used by the public to gain access to the beach, then a deviation to the development standards that would result in blockage of such access should not be permitted. Similarly, if development is proposed in a location where an identified view corridor exists, a deviation to a development standard that would allow an increase in height such that the public view is obstructed should not be permitted.

Another finding that must be met is that the proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program. Any development proposal that includes affordable housing must be considered with regard to its consistency with the certified land use plan for the area. Each land use plan contains specific policies addressing protection of coastal resources that are unique to the geographic plan area. For example, in the Point Loma community, the LUP contains policies addressing protection of public views along the San Diego Bay in the La Playa area and also the protection of a bayside trail that has historically been used by the public for lateral access. In La Jolla, the LUP contains numerous policies addressing protection of public views toward the ocean and identifies numerous view corridors. Specific policies also address siting of development to protect such views including terracing development away from street corners along streets that are designated view corridors to maximize public views, and opening up side yards to prevent a “walled-off” effect from the ocean. When considering appropriate incentives for development with affordable housing in these communities, the City must consider the applicable land use policies and assure the approved development will not conflict with such policies in the certified Land Use Plan. In case of conflict, the findings cannot be made.

The CDP findings also require that coastal development between the nearest public road and the sea or the shoreline shall be in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act. For example, in the City of San Diego, the first three to four blocks inland from the coast are designated as a Beach Impact Area. This area is where parking is most competitively sought by beachgoers as well as patrons of local retail shops and business establishments. Within this area, the City has imposed more stringent parking standards which also include prohibition of curb cuts, etc. to maximize on-street parking. In these areas, it would not be appropriate to approve a project for affordable housing with a development incentive that would allow a reduction to on-site parking.



The City has assured Commission staff that in the event these findings cannot be made, then the deviation from the applicable regulations would not be permitted because the proposed development would not be found consistent with the certified LCP. The approved project should only be inconsistent in terms of density and the applicable development standard for which the deviation is sought.

In order to assure this interpretation is carried out in the implementation of the proposed LCP amendment, the Commission finds an additional CDP finding is appropriate to specifically address deviations from applicable development regulations for affordable housing. Such a finding would function similarly to the supplemental findings for deviations from the ESL regulations in the Coastal Overlay Zone found in Section 126.0708. The additional finding assures that discretion will be applied by the decision maker to determine the affordable housing is approved with the development incentive that is most protective of significant coastal resources depending on the site constraints, location, sensitivity of the resource and potential impacts. In all cases, a deviation from applicable regulations should only be approved as an incentive if the decision maker can find that the proposed development is otherwise consistent with the certified LCP with the exception of density and the applicable standard for which the deviation is sought. As so modified, the Commission can find the proposed revisions to the certified LCP Implementation Plan is consistent with and adequate to carry out the policies of the certified land use plans.

## **B. ENVIRONMENTALLY SENSITIVE LANDS**

In the certified Land Development Code, the Environmentally Sensitive Lands regulations apply to all proposed development when environmentally sensitive lands are present on the premises. Environmentally Sensitive Lands (ESL) include sensitive biological resources, steep hillsides, coastal beaches, sensitive coastal bluffs and 100-year floodplains. The ESL regulations are intended to assure that development occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to flooding in specific areas while minimizing the need to construct flood control facilities.

The ESL regulations as certified by the Commission as part of the LCP Implementation Plan identify uses permitted within the above mentioned ESL and contain specific development regulations for each type of sensitive resource. In addition to a Coastal Development Permit with the associated findings, the City also requires a Site Development Permit because of potential impacts to ESL. Pursuant to Section 126.0504 (b), a Site Development Permit may only be approved if the following findings are made:

- (1) The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;

(2) The proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces, flood hazards, or fire hazards;

(3) The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;

(4) The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan;

(5) The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and,

(6) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate negative impacts created by the proposed development.

In some cases in review of LCPAs for affordable housing, the Commission has required that constrained lands be deducted from the acreage of developable land prior to application of the density bonus. Constrained lands might include, for example, steep hillsides or wetlands. However, the Environmentally Sensitive Lands regulations in the Land Development Code do not require that constrained area be deducted from the acreage prior to calculation of density. The environmentally sensitive lands are excluded from the building envelope available for development, and certain development regulations apply. In review of projects requesting a development incentive for affordable housing, if the incentive can be accommodated on a site which contains environmentally sensitive lands consistent with the resource protection policies of the certified Land Use Plan and the ESL regulations, and the above findings can be made, then the incentive may be permitted.

However, when environmentally sensitive lands are present, often times even the maximum base density allowed by the underlying zone cannot be accommodated on a site consistent with the ESL regulations. The base density is the maximum number of units that can be constructed on a site pursuant to the underlying zone. In those situations where site constraints do not allow for the maximum density, it is likely an additional development incentive which allows for more units would not be appropriate. In those instances, it is likely only a financial incentive would allow for the proper findings to be made.

The City has also strongly emphasized that an applicant with Environmentally Sensitive Lands would not be permitted a deviation from the ESL development regulations to accommodate a density bonus because the findings for a Site Development Permit or Coastal Development Permit could not be made, as such a proposal would not be the least environmentally damaging alternative. The Commission concurs with this evaluation and believes the option of a deviation to the ESL regulations addressed in Section 143.0150 should not be an incentive that is available in the Coastal Overlay Zone through

the Coastal Development Permit process. In its certification of the LDC, the Commission suggested changes that were ultimately accepted by the City that addressed such deviations. The language makes clear that, in the Coastal Overlay Zone, deviations from the ESL regulations should only be considered if there would otherwise be a denial of all economically viable use of the property. The Commission does not believe that a density increase beyond that allowed by the underlying zone should be an option in those limited cases involving such highly constrained and sensitive property. In such cases, a density increase would most certainly result in conflicts with other applicable LCP provisions such that the required findings could not be made.

Therefore, the Commission is suggesting a modification to Section 143.0150 of the ESL regulations which addresses the deviation process. In that section, it would be clear that deviations to the ESL regulations are not permitted as a development incentive for affordable housing.

Therefore, in summary, with the proposed suggested modifications, the determination of whether a project complies with the Land Development Code is based on consistency with all of the regulations of the code addressing protection of coastal resources and environmentally sensitive lands inclusive of any deviations from development regulations. With the proposed suggested modifications, the Commission finds the proposed implementation plan revision consistent with, and able to carry out, the certified land use plan segment, as modified herein. In addition, with regard to the proposed changes to the City's affordable housing program including application of more stringent affordability requirements, provisions for density bonuses for projects where 50% of the units are reserved for senior citizens and changes to how the density bonus is calculated, the Commission also finds these proposed changes consistent with, and able to carry out, the certified land use plan.

#### **PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the City's implementation plan amendment, as proposed, would result in significant impacts under the meaning of the California Environmental Quality Act. Without additional clarifying language to assure that developments with affordable

housing inclusive of increased densities and/or development incentives is most protective of coastal resources and consistent with all other policies of the certified LCP, potential impacts to such resources might occur. As suggested modification has been added which will eliminate any ambiguity and will make it very clear that the ordinance will not permit impacts to coastal resources. However, with inclusion of the suggested modification, implementation of the revised ordinance would not result in significant impacts under the meaning of the California Environmental Quality Act. Therefore, this modified LCP amendment can be found consistent with the provisions of the California Environmental Quality Act.